SUPREME COURT, U. S.

AUG 19 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2007

QUICK SHOP MARKETS, INC.
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

AND

RETAIL STORE EMPLOYEES UNION, LOCAL 655, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Respondents.

SUPPLEMENTAL MEMORANDUM TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CHARLES A. KOTHE
RICHARD L. BARNES
124 East Fourth Street
Tulsa, Oklahoma 74103

WAYNE R. SCOTT CO., 507 S. QUAKER, TULSA, OK. 74120 – (918) 587-7806

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JURISDICTION

On March 15, 1974, the Court of Appeals entered it's Order for Enforcement (Pet. App. A, pp. 21-23).[1]

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[1]References to the original Petition will be designated "Pet." followed by the page number(s). References to the Supplemental Memorandum will be designated "Pet. Supp." followed by the page number(s).

On April 11, 1974, the Clerk of the Court of Appeals mailed to all parties an apparent notice of entry of judgment on that date, as required by Rule 36 of the Federal Rules of Appellate Procedure.

On July 19, 1974, the Court of Appeals entered it's Order (Pet. Supp. App. G, p. 3), in which it vacated it's Order for Enforcement entered March 15, 1974, and substituted therefor it's Order for Enforcement dated July 19, 1974 (Pet. Supp. App. H, p. 4). The Clerk of the Court of Appeals entered judgment on July 19, 1974.

Petitioner had sought an order from the Court of Appeals to compel the National Labor Relations Board to comply with Rule 19 of the Federal Rules of Appellate Procedure. Petitioner's Motion was denied by Order of the Court of Appeals entered July 31, 1974.

Respectfully submitted,

CHARLES A. KOTHE
RICHARD LEE BARNES
124 East Fourth Street
Tulsa, Oklahoma 74103

APPENDIX G

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 73-1699

September Term, 1973

National Labor Relations Board,
Petitioner,

v.

Quick Shop Markets, Inc.,
Respondent.

Application for Enforcement of
Order of National Labor Relations Board.

This Court having considered the motion of the respondent to vacate order of enforcement of this Court heretofore entered in this cause on March 15, 1974, it is now here ordered that the motion to vacate and set aside the order of enforcement heretofore entered be granted, and that new order of enforcement be entered this date in the same substance as heretofore entered.

July 19, 1974

APPENDIX H

UNITED STATES COURT OF APPEALS
For The Eighth Circuit
September Term, 1973

No. 73-1699

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

RETAIL STORE EMPLOYEES UNION, LOCAL 655, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Intervenor,

v.

QUICK SHOP MARKETS, INC.,
Respondent.

Submitted: March 11, 1974
Filed: July 19, 1974

Before GIBSON, BRIGHT, and STEPHENSON, Circuit Judges.

ORDER OF ENFORCEMENT

The National Labor Relations Board petitions this court for enforcement of it's order issued on July 23, 1973, against respondent Quick Shop Markets, Inc. (the Company) and reported at 204 NLRB No. 151. The order requires the Company to bargain collectively with

the Retail Store Employees' Union, Local No. 655, of the Retail Clerks International Association, AFL-CIO, and to post appropriate notices.

The Company filed timely objections to a representation election won by the Union and alleged that the Union excessively paid employee-election observers in order to influence their votes, that the Union unlawfully engaged in electioneering in the voting area, that the Union kept a tally of the employees who voted, and that the Union misrepresented Union wages in campaign literature. The Company's objections were overruled in their entirety and the Union was certified by the Regional Director, whose decision was first upheld by the Board in it's Decision on Review published at 200 NLRB No. 121, with Chairman Miller dissenting.

The Company's objection to the election regarding the payment of $15.00 to employee-election observers for four and one-half hours of work at the polls provides in principle an arguable legal issue. We, however, accede to the Board's finding that these payments do not provide a valid objection to the election, and the facts and circumstances of this case do not warrant additional explication of the developing law on this somewhat troublesome issue. We have also reviewed the Company's other objections to the election and conclude that there is substantial evidence on the record as a whole to support the Board's decision. Board's order enforced. See Rule 14 of this court.

A true copy.

(See attached sheet for cost information)

Attest:
s/s
Clerk, U.S. Court of Appeals, Eighth Circuit

Costs taxed in favor of National Labor Relations Board in Case No. 73-1699:	
Costs of printing 10 copies of Appendix:	$ 278.60
Costs of printing 25 copies of Brief of National Labor Relations Board:	$ 931.40
Total costs of Labor Board for recovery from Quick Shop Markets, Respondent:	$1,210.00

IN THE

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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1974

No. 73-2007

QUICK SHOP MARKETS, INC.
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Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2007

QUICK SHOP MARKETS, INC.
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD
AND
RETAIL STORE EMPLOYEES UNION, LOCAL 655, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Respondents.

SUPPLEMENTAL MEMORANDUM TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JURISDICTION

On March 15, 1974, the Court of Appeals entered its Order for Enforcement (Pet. App. A, pp. 21-23)[1]

[1]References to the original Petition will be designated "Pet." followed by the page number(s). References to the Supplemental Memorandum will be designated "Pet. Supp." followed by the page number(s).

pursuant to Rule 14 of the Rules of the United States Court of Appeals for the Eighth Circuit. On April 11, 1974, the Clerk of the Court of Appeals mailed to all parties an apparent notice of entry of judgment on that date, as required by Rule 36 of the Federal Rules of Appellate Procedure.

On July 10, 1974, Petitioner filed its Petition for Writ of Certiorari herein, within ninety days from the apparent entry of judgment in the Court of Appeals.

On July 19, 1974, the Court of Appeals entered its Order (Pet. Supp. App. G, p. 3), in which it vacated its Order for Enforcement entered March 15, 1974, and substituted therefor its Order for Enforcement dated July 19, 1974 (Pet. Supp. App. H, p. 4). The Clerk of the Court of Appeals entered judgment thereon on July 19, 1974.

As these purported judgments were only docket notations of the underlying Orders of Enforcement, Petitioner had sought an order from the Court of Appeals to compel the National Labor Relations Board to comply with Rule 19 of the Federal Rules of Appellate Procedure. Petitioner's Motion was denied by Order of the Court of Appeals entered July 31, 1974.

However, the Court of Appeals entered its Supplemental Order of Enforcement on September 4, 1974 (Pet. Supp. App. I, p. 8), vacating its Order entered on July 19, 1974 (Pet. Supp. App. G, p. 3), and stating

that ". . . a decision of this court pursuant to Rule 14 [of this court] shall be considered an 'opinion' demanding the requirements of Fed. R. App. P. 19," and directing the parties to comply with Rule 19, Federal Rules of Appellate Procedure.

Thereafter, the National Labor Relations Board submitted its proposed judgment, to which Petitioner herein timely filed its Opposition pursuant to Rule 19, Federal Rules of Appellate Procedure. Petitioner submitted with its Opposition its own proposed judgment, which was entered by the Court of Appeals on September 26, 1974 (Pet. Supp. App. J., p. 10).

Respectfully submitted,

CHARLES A. KOTHE
RICHARD LEE BARNES
124 East Fourth Street
Tulsa, Oklahoma 74103

APPENDIX G

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 73-1699

September Term, 1973

National Labor Relations Board,
Petitioner,

v.

Quick Shop Markets, Inc.,
Respondent.

Application for Enforcement of
Order of National Labor Relations Board.

This Court having considered the motion of the respondent to vacate order of enforcement of this Court heretofore entered in this cause on March 15, 1974, it is now here ordered that the motion to vacate and set aside the order of enforcement heretofore entered be granted, and that new order of enforcement be entered this date in the same substance as heretofore entered.

July 19, 1974

APPENDIX H

UNITED STATES COURT OF APPEALS
For The Eighth Circuit
September Term, 1973

No. 73-1699

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

RETAIL STORE EMPLOYEES UNION, LOCAL 655, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Intervenor,

v.

QUICK SHOP MARKETS, INC.,
Respondent.

Submitted: March 11, 1974
Filed: July 19, 1974

Before GIBSON, BRIGHT, and STEPHENSON, Circuit Judges.

ORDER OF ENFORCEMENT

The National Labor Relations Board petitions this court for enforcement of its order issued on July 23, 1973, against respondent Quick Shop Markets, Inc. (the Company) and reported at 204 NLRB No. 151. The order requires the Company to bargain collectively with

the Retail Store Employees' Union, Local No. 655, of the Retail Clerks International Association, AFL-CIO, and to post appropriate notices.

The Company filed timely objections to a representation election won by the Union and alleged that the Union excessively paid employee-election observers in order to influence their votes, that the Union unlawfully engaged in electioneering in the voting area, that the Union kept a tally of the employees who voted, and that the Union misrepresented Union wages in campaign literature. The Company's objections were overruled in their entirety and the Union was certified by the Regional Director, whose decision was first upheld by the Board in its Decision on Review published at 200 NLRB No. 121, with Chairman Miller dissenting.

The Company's objection to the election regarding the payment of $15.00 to employee-election observers for four and one-half hours of work at the polls provides in principle an arguable legal issue. We, however, accede to the Board's finding that these payments do not provide a valid objection to the election, and the facts and circumstances of this case do not warrant additional explication of the developing law on this somewhat troublesome issue. We have also reviewed the Company's other objections to the election and conclude that there is substantial evidence on the record as a whole to support the Board's decision. Board's order enforced. See Rule 14 of this court.

A true copy.

(See attached sheet for cost information)

Attest:

s/s

Clerk, U.S. Court of Appeals, Eighth Circuit

Costs taxed in favor of National Labor Relations Board in Case No. 73-1699:	
Costs of printing 10 copies of Appendix:	$ 278.60
Costs of printing 25 copies of Brief of National Labor Relations Board:	$ 931.40
Total costs of Labor Board for recovery from Quick Shop Markets, Respondent:	$1,210.00

APPENDIX I

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 73-1699

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

RETAIL STORE EMPLOYEES UNION,
LOCAL 655, RETAIL CLERKS
INTERNATIONAL ASSOCIATION,
AFL-CIO,
Intervenor,

v.

QUICK SHOP MARKETS, INC.,
Respondent.

On Application for Enforcement of an
Order of The National Labor Relations Board

Filed: September 4, 1974

Before GIBSON, BRIGHT, and STEPHENSON, Circuit Judges.

SUPPLEMENTAL ORDER OF ENFORCEMENT

This court's entry of judgment of July 19, 1974, is vacated by this order. The March 15, 1974, Order of Enforcement pursuant to Rule 14 of this court is incorporated herein in this Supplemental Order of Enforcement; however, the entry of judgment pursuant to the

March 15th Order of Enforcement remains vacated, as previously ruled.

This court now holds that this Supplemental Order of Enforcement, incorporating the March 15th Order of Enforcement, is "an opinion of [this] court * * * directing the entry of judgment enforcing" the National Labor Relations Board's Order. See Fed. R. App. P. 19. For the purposes of Fed. R. App. P. 19, a decision of this court pursuant to Rule 14 shall be considered an "opinion" demanding the requirements of Fed. R. App. P. 19. The parties shall forthwith comply with Fed. R. App. P. 19 and the court shall enter judgment thereafter.

A true copy.

Attest:
s/s Robert C. Tucker
Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX J

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 73-1699

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

RETAIL STORE EMPLOYEES UNION,
LOCAL 655, RETAIL CLERKS
INTERNATIONAL ASSOCIATION,
AFL-CIO,
Intervenor,

v.

QUICK SHOP MARKETS, INC.,
Respondent.

JUDGMENT

Before: GIBSON, BRIGHT, and STEPHENSON, Circuit Judges.

THIS CAUSE came on to be heard upon an application of the National Labor Relations Board for enforcement of a certain order issued by it against Respondent, Quick Shop Markets, Inc., its officers, agents, successors, and assigns, on July 23, 1973. The Court heard argument of respective counsel on March 11, 1974, and has considered the briefs and transcript of record filed in this cause. On March 15, 1974, the Court being fully advised in the premises, issued an Order of Enforcement. On July 19, 1974, the Court entered an order vacating and setting aside its order of March 15, 1974, and enter-

ing a new Order of Enforcement as of that date. Thereafter, on September 4, 1974, the Court issued a Supplemental Order of Enforcement, vacating the Order of July 19, 1974, incorporating the Order of March 15, 1974, but advising that the entry of judgment pursuant to the March 15, 1974 Order remains vacated as previously ruled, and directing the submission of a proposed judgment in conformity with Fed. R. App. P. 19. Accordingly, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Eighth Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that the Respondent, Quick Shop Markets, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Retail Store Employees' Union, Local No. 655, affiliated with Retail Clerks International Association, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees of the Respondent employed at its retail stores located in the Metropolitan St. Louis area of St. Louis City, St. Louis County, Jefferson County and St. Charles County, Missouri, including warehousemen, but excluding store managers, assistant store managers, temporary summer employees, office clerical and professional employees, guards, and supervisors, as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Missouri places of business copies of the attached notice marked "Appendix." Copies of said notice on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Judgment, what steps have been taken to comply herewith.

Dated: September 26, 1974

A True Copy:

Attest:
s/s Robert C. Tucker
Clerk, U.S. Court of Appeals, 8th Circuit.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS

Enforcing an Order of the
National Labor Relations Board

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with RETAIL STORE EMPLOYEES' UNION, LOCAL NO. 655, affiliated with RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the abovenamed Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All employees of the Respondent employed at its retail stores located in the Metropolitan St. Louis area of St. Louis city, St. Louis County, Jefferson County and St. Charles County, Missouri, including warehousemen, but excluding store managers, assistant store managers, temporary summer employees,

office clerical and professional employees, guards, and supervisors as defined in the Act.

QUICK SHOP MARKETS, INC.
(Employer)

Dated: _____ By: _____
(Representative) (Title)

This is an Official Notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Room 448, 210 North 12th Blvd., St. Louis, Missouri 63101, 622-4361.